

Message Text

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ACTION STR FOR AMB WOLFF AND MATTHEISEN

STR PASS CODEL

E.O. 11652 N/A
TAGS: ETRD, MTN, EC
SUBJECT: EC COMMISSION PAPER ON MFN/SELECTIVE SAFEGUARDS

REF: GENEVA 5511

1. EC COMMISSION DELIVERED FOLLOWING "DISCUSSION PAPER"
THIS MORNING PREFACED WITH EXPLANATORY NOTE:

QUOTE:

I AM SENDING YOU ENCLOSED TWO COPIES OF A DISCUSSION
PAPER ON INTERNATIONAL PROCEDURES FOR REPORTING AND FOR
SUPERVISION OF SAFEGUARD MEASURES, WHETHER MFN OR ON
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SELECTIVE BASIS. THIS PAPER IS NOT IN ALL ITS DETAILS
AN AGREED POLICY POSITION OF THE EUROPEAN COMMUNITY,
IN PARTICULAR SO FAR AS THE PRECISE LANGUAGE IS CONCERNED;
BUT THE COMMISSION HAS BEEN AUTHORIZED TO CONTINUE
INFORMAL DISCUSSIONS WITH OTHER DELEGATIONS ON THE BASIS
OF THE IDEAS OUTLINED IN THE DOCUMENT.

AMONG OTHER POINTS WHICH WILL NEED TO BE CONSIDERED IN THE COURSE OF FURTHER DISCUSSION WE WILL WISH TO EXAMINE HOW THE PROCEDURES OUTLINED FIT WITH OTHER ELEMENTS OF A FURTHER CODE E.G. ON THE CONDITIONS THAT MAY BE APPLIED TO SAFEGUARDS ACTIONS AND ANY FURTHER OBLIGATIONS IN RESPECT OF VOLUNTARY RESTRAINT ARRANGEMENTS.

TEXT OF DISCUSSION PAPER:

PROCEDURES FOR SAFEGUARD ACTION AND FOR INTERNATIONAL REVIEW/SURVEILLANCE OF SUCH MEASURES

1. THE OBJECTIVE IS TO DESCRIBE THE PROCEDURES WHICH WOULD APPLY WHEN IT IS FOUND NECESSARY TO APPLY SAFEGUARD MEASURES. IN THE CASE OF BEGIN UNDERScore GLOBAL END UNDERScore MEASURES, PROCEDURES WOULD BE SUCH AS TO ENCOURAGE COMPLIANCE WITH IMPROVED INTERNATIONAL DISCIPLINES AND RESPECT FOR THE GATT RULES, AS WELL AS GREATER TRANSPARENCY AND MULTILATERAL SUPERVISION OF THESE TYPES OF MEASURE. IN THE CASE OF BEGIN UNDERScore SELECTIVE END UNDERScore MEASURES THE PROCEDURES SHOULD BE SUCH THAT COUNTRIES DO NOT RECEIVE UNDUE ENCOURAGEMENT TO ADOPT THIS APPROACH, WHICH SHOULD BE SEEN TO BE MORE DIFFICULT THAN THE GLOBAL APPROACH WITHOUT BEING SO ONEROUS AS TO BE IMPOSSIBLE. IT IS UNDERSTOOD THAT THE USE OF SELECTIVE MEASURES WOULD BE APPROPRIATE ONLY IN UNUSUAL EXCEPTIONAL CIRCUMSTANCES, FOR EXAMPLE WHERE VERY RAPID GROWTH IN IMPORTS FROM ONE OR A FEW SUPPLIERS LIMITED OFFICIAL USE

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CAUSES OR THREATENS SERIOUS INJURY AND CREATES ADJUSTMENT DIFFICULTIES.

2. THE BASIC ELEMENTS OF THE PROCEDURES WOULD BE AS FOLLOWS:

- TO ASSURE TRANSPARENCY: PRIOR BILATERAL CONTACTS AND CONSULTATION, AND NOTIFICATION IN GATT,
- TO PROVIDE A FRAMEWORK OF GREATER DISCIPLINE AND TO PREVENT ABUSIVE SAFEGUARD ACTIONS: DOMESTIC PROCEDURES WHICH WOULD ENSURE A BALANCED CONSIDERATION OF THE PROBLEM AND RESPONSIBLE DECISIONS, PLUS THE REQUIREMENT TO EXPLAIN THE FACTS OF THE SITUATION AND THE NEED FOR ACTION IN BILATERAL AND EVENTUALLY MULTILATERAL CONSULTATIONS, PLUS THE OBSERVANCE OF INJURY CRITERIA, CONDITIONS APPLIED TO SAFEGUARD ACTION AND PROCEDURES TO BE AGREED. A FURTHER DISCIPLINE IS IMPOSED BY THE EVENTUAL RISK OF RETALIATORY MEASURES,
- INTERNATIONAL SURVEILLANCE: A COMMITTEE OF SIGNA-

TORIES WOULD BE RESPONSIBLE FOR REVIEWING INDIVIDUAL ACTIONS ON REQUEST, FOR INTERPRETING REQUIREMENTS OF THE CODE AND SUPERVISING ITS APPLICATION, E.G. SUCH MATTERS AS PROOF OF INJURY, LEVELS OF IMPORTS PERMITTED AND GROWTH, DURATION OF MEASURE, POLICY TO ACHIEVE DOMESTIC ADJUSTMENT ETC. IN ADDITION, AN ANNUAL REPORT PROCEDURE WOULD ALLOW REGULAR REVIEW OF MEASURES IN FORCE.

- ROLES OF COMMITTEE: PRIMARY OBJECTIVE IN CASES OF DISPUTE WOULD BE TO PROMOTE REASONABLE AGREED SOLUTIONS, WITH INDICATIONS AS NECESSARY OF APPROPRIATE MODIFICATIONS TO MEASURES TAKEN TO MAKE THEM MORE ACCEPTABLE. THE COMMITTEE WOULD NOT ISSUE DECISIONS LIMITED OFFICIAL USE

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OR JUDGMENTS ON QUESTIONS OF LEGALITY OR THE RELA-

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C O R R E C T E D C O P Y ADD FIRST 3 LINES SEC 2

TIONSHIP BETWEEN ACTION TAKEN AND THE OBLIGATIONS IN

THE CODE; BUT THE DEVELOPMENT OF A CONSENSUS OR MAJORITY VIEW WOULD CLEARLY HAVE AN INFLUENCE ON THE PARTIES.

- PROVISION FOR ACTION IN CRITICAL CIRCUMSTANCES:
PRO MEMORIA.

3. IN ACCORDANCE WITH THE BASIC ELEMENTS INDICATED ABOVE A TWO-TRACK PROCEDURE IS SET OUT BELOW, THE FIRST TRACK APPLICABLE TO GLOBAL (MFN) MEASURES AND THE SECOND TO SELECTIVE ACTION. MANY FEATURES OF THESE TWO TRACKS ARE SIMILAR BUT SOME PRINCIPAL POINTS OF DIFFERENCE MAY BE UNDERLINED.

(I) ACTION ON EITHER TRACK WOULD REQUIRE SOME DEGREE OF PRIOR BILATERAL CONTACT AND DISCUSSION WITH THE PARTIES CONCERNED. IN THE CASE OF SELECTIVE ACTION IT IS INDICATED THAT THIS BILATERAL PHASE SHOULD LIMITED OFFICIAL USE

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INVOLVE SUBSTANTIVE DISCUSSIONS.

(II) THE BASIC THRUST OF THE BILATERAL PHASE SHOULD BE THAT THE MAJORITY OF CASES WOULD BE SETTLED BY AGREEMENT BETWEEN THE PARTIES ON A FAIR AND EQUITABLE BASIS. THIS OBJECTIVE IS THE LOGICAL APPROACH TO SITUATIONS WHICH IN MOST CASES ARE THE RESULT OF PROBLEMS WITHIN THE IMPORTING COUNTRY AS WELL AS PROBLEMS CAUSED BY THE EXPORTING COUNTRY - IN OTHER WORDS A DEGREE OF CO-RESPONSIBILITY.

(III) A PROCEDURE FOR INTERNATIONAL REVIEW OF ALL CASES ON REQUEST WOULD BE BALANCED BY THE ULTIMATE RIGHT OF THE IMPORTING COUNTRY TO TAKE A MEASURE CONSIDERED NECESSARY AND TO FACE RETALIATION. IN THE CASE OF THE SECOND TRACK, INTERNATIONAL REVIEW OF THE REASONS FOR SELECTIVE RATHER THAN MFN ACTION WOULD BE REQUIRED IN ALL CASES WHERE THE MEASURE WAS NOT AGREED BETWEEN THE PARTIES.

BEGIN UNDERLINE TRACK I - GLOBAL MEASURES: END UNDERLINE
PROCEDURE PRIOR TO ACTION

- BILATERAL NOTIFICATION TO THE PRINCIPAL SUPPLIERS OF THE EXISTENCE OF THE PROBLEM, WITH AN INDICATION OF THE MEASURES PROPOSED AND WHEN DECISIONS WOULD BE TAKEN;

- NOTIFICATION TO GATT OF INTENDED MEASURES, WITH APPROPRIATE BACKGROUND INFORMATION;

- BILATERAL CONSULTATION WITH THE PARTIES MAINLY CONCERNED (SUBSTANTIAL INTEREST) ON THE CIRCUMSTANCES

AND ON INTENDED MEASURES; (BEGIN FOOTNOTE (1)
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THE EXTENT TO WHICH THESE CONSULTATIONS CAN BE
PURSUED BEGIN UNDERLINE PRIOR TO ACTION BEING TAKEN
END UNDERLINE WILL DEPEND LARGELY ON THE SPEED OF
REACTION OF THE COUNTRY OR COUNTRIES AFFECTED.
NORMALLY THE PERIOD ENVISAGED FOR CONSULTATIONS AT
THIS STAGE WOULD BE 15-30 DAYS. END FOOTNOTE (1)

CRITICAL CIRCUMSTANCES:

IN CRITICAL CIRCUMSTANCES (AS DEFINED IN ARTICLE XIX:2),
IT WOULD BE NECESSARY TO ENVISAGE THAT THE NOTIFICATIONS
TO BILATERAL PARTNERS AND IN GATT WOULD HAVE TO BE
SIMULTANEOUS WITH THE APPLICATION OF MEASURES; AND THAT
THE CONSULTATIONS WOULD THEN TAKE PLACE IMMEDIATELY
AFTERWARDS E.G. TO BE BEGUN WITHIN 15 DAYS.

PROCEDURE AFTER ACTION TAKEN

- WHERE BEGIN UNDERLINE PROVISIONAL ACTION END UNDERLINE
IS NECESSARY BEFORE CONSULTATIONS ARE COMPLETED,
THESE SHOULD CONTINUE WITH A VIEW TO REACHING
AGREEMENT BETWEEN THE PARTIES TO THE MAXIMUM EXTENT
POSSIBLE;

- IN CASE OF DISAGREEMENT AMONG THE PARTIES TWO
POSSIBILITIES:

(I) RETALIATION AS CURRENTLY PERMITTED UNDER
ARTICLE XIX,

(II) REFERENCE TO THE COMMITTEE OF SIGNATORIES FOR
REVIEW;

- THE REVIEW WOULD CONSIDER ALL CIRCUMSTANCES OF A
SAFEGUARD MEASURE AND ITS EFFECTS WITH A VIEW TO
CONCILIATION BETWEEN THE PARTIES AND ARRIVING AT A
REASONABLE SOLUTION.

- THE IMPORTING PARTY SHOULD USE ITS BEST ENDEAVOUR TO
ARRIVE AT AGREED SOLUTIONS IN THE LIGHT OF THIS
REVIEW: WHERE NEVERTHELESS THE SAFEGUARD MEASURE
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MUST IN ITS VIEW BE MAINTAINED, RETALIATION AS PER-

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C O R R E C T E D C O P Y ADD FIRST 8 LINES SEC 3

MITTED UNDER ARTICLE XIX WOULD REMAIN AVAILABLE;
BEGIN FOOTNOTE (2) ALTHOUGH THE RIGHT TO RETALIATE
EXISTED ALREADY BEFORE THE STAGE OF INTERNATIONAL
REVIEW, IT IS CLEAR THAT THE COMMITTEE EXAMINATION
OF THE PROBLEM AND ITS VIEWS WOULD STRONGLY INFLUENCE
THE CONTRACTING PARTIES IN THEIR CONSIDERATION OF THE
LEVEL OF RETALIATION TO BE APPROVED. END
FOOTNOTE (2)

- ALL SAFEGUARD MEASURES TO BE REVIEWED BY THE
COMMITTEE OF SIGNATORIES ON THE BASIS OF AN ANNUAL
REPORT. BEGIN FOOTNOTE (3) THE OBJECT OF THIS REVIEW
WOULD BE TO PROVIDE AN OCCASION TO REMIND THE
IMPORTING PARTY OF THE NEED TO LIFT THE MEASURE AS
SOON AS POSSIBLE. ALSO TO PERMIT DISCUSSION OF
QUOTA LEVELS, GROWTH, PROGRESS IN ADJUSTMENT OF
DOMESTIC INDUSTRY ETC. END FOOTNOTE (3)

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BEGIN UNDERLINE TRACK II - SELECTIVE MEASURES; END
UNDERLINE
PROCEDURE PRIOR TO ACTION

- PRIOR NOTIFICATION BILATERAL AND IN GATT PRECISELY
AS UNDER TRACK I;

- SUBSTANTIVE BILATERAL DISCUSSION WITH THE COUNTRY OR
COUNTRIES CONCERNED INCLUDING EXPLANATIONS OF THE
REASONS WHY SELECTIVE ACTION IS APPROPRIATE. THE
DISCUSSION SHOULD ALSO COVER AS A MINIMUM THE SITUA-
TION OF OTHER SUPPLIERS TO THE MARKET AND AN ANALYSIS
OF THE IMPORT SITUATION IN GENERAL IN THE LIGHT OF
THE SELECTIVE ACTION PROPOSED BEGIN FOOTNOTE (1)
TO ALLOW TIME FOR MORE SUBSTANTIVE BILATERAL CONSUL-
TATIONS THE PERIOD NORMALLY ENVISAGED UNDER THIS
TRACK WOULD BE 30-60 DAYS. (COMPARE NOTE (1) UNDER
THE FIRST TRACK.)END FOOTNOTE (1)

CRITICAL CIRCUMSTANCES:

IN CRITICAL CIRCUMSTANCES (AS DEFINED IN ARTICLE XIX:2),
IT WOULD BE NECESSARY TO ENVISAGE THAT THE NOTIFICATIONS
TO BILATERAL PARTNERS AND IN GATT WOULD HAVE TO BE
SIMULTANEOUS WITH THE APPLICATION OF MEASURES; AND THAT
THE CONSULTATIONS WOULD THEN TAKE PLACE IMMEDIATELY
AFTERWARDS E.G. TO BE BEGUN WITHIN 15 DAYS.

PROCEDURE AFTER ACTION TAKEN

- EXCEPT IN CASES WHERE THE PARTIES ARE IN FULL AGREE-
MENT, A SELECTIVE MEASURE WOULD, AFTER ITS INTRODUC-
TION, AUTOMATICALLY BE THE SUBJECT OF MULTILATERAL
CONSULTATIONS BETWEEN THE IMPORTING COUNTRY AND
ANY EXPORTING COUNTRIES INDICATING AN INTEREST.
THIS CONSULTATION COULD IF APPROPRIATE, TAKE PLACE
IN THE COMMITTEE OF SIGNATORIES;

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- THIS CONSULTATION WOULD EXAMINE THE REASONS FOR
SELECTIVE RATHER THAN MFN ACTION AND WOULD CONSIDER
IN PARTICULAR WHETHER THE OBJECTIVES OF THE IMPORT-
ING COUNTRY MIGHT NOT EQUALLY HAVE BEEN MET BY
ACTION ON A GLOBAL BASIS;

- IN THE LIGHT OF THE OUTCOME OF THIS CONSULTATION THE
IMPORTING COUNTRY WOULD HAVE THE RIGHT TO MAINTAIN
OR MODIFY THE MEASURE TAKEN, INCLUDING THE POSSI-
BILITY TO CONVERT SELECTIVE ACTION INTO ACTION ON AN
MFN BASIS;

- IF APPROPRIATE AND IN THE LIGHT OF ANY DECISION
THUS TAKEN BY THE IMPORTING PARTY, THE COMMITTEE
MIGHT REVIEW THE SAFEGUARD ACTION ON A MORE GENERAL
BASIS AS SET OUT IN TRACK I. IN THAT EVENT THE
PURPOSE OF THIS REVIEW AND ITS IMPACT ON CONSEQUENT

ACTIONS BY THE PARTIES CONCERNED WOULD BE AS
INDICATED IN TRACK I.
BEGIN UNDERLINE
RETALIATION: END UNDERLINE
IT IS NOT ENVISAGED THAT AN EXPORTING COUNTRY'S RIGHT OF
RETALIATION UNDER ARTICLE XIX WOULD IN ANY EVENT BE
LIMITED UNDER THE ABOVE PROCEDURES. UNQUOTE

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